

The penalties for treason in medieval life and literature

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Treason appears to have fascinated the middle ages. As the most fundamental felony, it struck at the roots of feudal society through a complex of crimes: compassing or plotting the death of the sovereign, betraying his realm to an enemy, counterfeiting his coinage or falsifying his signature, seducing his wife or the wife of his son and heir. The basis of the felony was the same – betrayal of trust by an attack upon the security of the state, its administrative or economic validity, or the legitimacy of the succession – whether directed against the king or some lesser liege lord, and the law made no absolute distinction between high and petty treason. Both demanded exemplary punishment and drawing, hanging, emasculation, disembowelling, beheading, and quartering were employed in various combinations. In rare and aggravated cases flaying alive seems to have been included. This paper, though surveying the legal, moral, and symbolic bases of the penalties for treason, concentrates on the evidence for flaying, which has largely been ignored. It reviews and analyses the legal, historical, and literary records of this exceptional penalty. The frequency with which it occurs in literature, and the varied thematic use made of it to express abhorrence of treason, illustrates the significance which that crime had for the middle ages.

Students of medieval courtly literature are becoming increasingly conscious of the important role played by law in the lives of the feudal nobility for which such literature was originally produced, men whose ruling function required them not only to administer justice but to interpret and even make the law. We have recently been reminded of the natural interrelationship of romance literature and vernacular codes, both derived from oral tradition, both framed for public recitation rather than private reading, both affirming and preserving the ideals and values of the ruling class: "There are few sustained narrative works belonging to the twelfth and thirteenth centuries that do not contain a trial"; "... the inclusion of at least one scene of judicial combat, oath, or ordeal appears to have been a *sine qua non* of poetic production" (Bloch 1977:4). The specific reference here is to the literature of France, but the statement might with almost equal justice be applied to courtly literature in Middle English, and in particular to the romance. In both cultures, it was those aspects of contemporary law which most closely touched the interests of their courtly patrons to which the poets were most naturally drawn. In an age when law was predominantly concerned with the affairs of the great rather than the humble, when the powerful looked to it to define their rights over lesser men and to protect their interests from those more powerful still, no aspect of the code was more relevant to the feudal aristocracy, more productive of thematic interest for the authors of courtly romance, than the law of treason.

Treason in medieval law was a felony – indeed, the original and characteristic

felony; that is to say, a crime involving some breach of the feudal bond between lord and man, meriting forfeiture of his *fief* by the dependant, if he were the guilty party, or, if the superior were at fault, the loss of his lordship. The derivation of the term is disputed, but Pollock and Maitland support Coke's assumption that the low Latin *felo* is a derivative of the Latin *fell-*, 'gall'; hence "one full of bitterness or venom" – gall and venom being closely associated in the popular mind (Pollock and Maitland (1968a:465)). The implication is that *felonia* was as much a social as a legal breach, and one rooted in viciousness of character. The use of the derived terms in French legal and secular literature suggests the persistence of an element of moral condemnation: *félonie* is applied equally to acts of infidelity towards God and to breaches of the chivalric code; *felon* is coupled with *parjure* and *traître* in application to Saracens and other pagans and to Judas, the type of the religious perjurer; the *felon* is *cruel*, *féroce*, *orgueilleux* (Hollyman 1957:152–4). Compare Stephenson (1956:34): ". . . very generally any action unbecoming a feudal gentleman might be called felonious"; and Hollyman (1957:154): *Les défauts associés au caractère du félon dérivent à la fois du manque de chevalerie et du manque d'esprit chrétien. Le félon est trompeur.* The Middle English derivatives of the term show a similar association of legal and moral senses: MED *feloun* n., 1(a) "one who deceives or commits treason"; (b) "one who is wicked or evil; evil-doer, sinner; monster, wretch". In legal usage, both French and English, 'felony' gradually widened until it covered any crime whose punishment might involve forfeiture of *fief*, including various types of treason; but it always implied a

certain gravity in the harm done and a certain wickedness in the doer.

Treason itself is easier to define in terms of the underlying moral concept than of legal details, which inevitably change from age to age and code to code (Pollock and Maitland 1968b:503):

Treason is a crime which has a vague circumference, and more than one centre. In the first place, there is the centre that is to this day primarily indicated by the word *betray*. In the earliest days to which we can go back the man who aided the enemies of his own tribe was hanged; probably his death was sacrificial . . . The bond of fealty is another centre. To betray one's lord was already in Alfred's day the worst of all crimes; it was the crime of Judas; he betrayed his lord.

These ideas are apparently part of the Germanic inheritance of English law and, since the conception of treason is rooted in the ancient Germanic principle of faith between lord and man, the crime was not confined to acts against the State or the monarch (Pollock 1899:227):

This prominence of the personal relation explains why down to quite modern times the murder of a husband by his wife, of a master by his servant, and of an ecclesiastical superior by a clerk, secular or regular, owing him obedience, were specially classed as 'petit treason' and distinguished from murder in general.

With the twelfth-century revival of learning, knowledge of Roman law added the concept of *maiestas* and the crime of lese-majesty; the mutual interdependence of leader and followers which informed the Germanic idea of kingship gave way to a more absolute authority modelled on imperial lines, and the definition of treason, high and petty, became more concrete and comprehensive (Bellamy 1970:1–3).

But even in the thirteenth century the basis of treason was still the betrayal of a trust, socially rather than legally defined

(Nichols 1865:40):

Tresun est en chescun damage qe hom fet a escient ou procure de liere a cely a qi hom se fet ami. Et poet estre treysoun graunt et petit; . . . Graunt tresoun est a compasser nostre mort, ou de nous desheriter de nostre reaume, ou de fauser noster seal, ou de couterfere nostre monnee ou de retourdre. Et si poet hom fere graunt treysoun vers autres persones en moutz des maneres, cum en procurant la mort de aukun qi se affiera de luy, sieum est de ceux qi enpoysounent lur seigneurs ou autres, et de ceux qi meynent les gentz en tel peril ou il perdent vie ou membre ou chateus.

For this English jurist, known to us as 'Britton', the basis of the trust betrayed was friendship rather than the feudal relationship,¹ and the distinction between high and petty treason lay in the gravity of the injury done, not the rank of the person injured. So petty treason for him involved lesser crimes against one's lord, such as counterfeiting his seal, committing adultery with his wife, or violating his daughter or the nurse of his children. The Great Statute of Treasons of 1352, which defined the legal concept of the crime for the age in which so many Middle English romances were written, did, however, draw the distinction between high treason and the lesser form on the basis of rank (Bellamy 1970:87):

Petty treason was to be the slaying of a master by a servant, husband by a wife or prelate by a lesser cleric. It was to be treated in all essentials as a felony. High treason was henceforth to include only crimes against the king's person and his regality, yet the list was by no means a short one. There were the obvious treasons of compassing or imagining the death of the king, the queen or the royal heir, and the violation of the king's wife, eldest daughter or the wife of his eldest son.

Yet the overriding importance of treason against the king in an age of growing royal power and sporadic resistance to it did not rule out the application of the term to acts of breach of trust towards lesser persons:

the rolls of parliament continue to use it in such cases throughout the fifteenth century, but without the qualification 'petty'; and in court records the type of treason involved in a particular case is revealed by the context rather than by terminology (Bellamy 1970:228-30). Both are spoken of in terms which suggest breaches of the moral as well as the social order.

It was, perhaps, the feeling that his moral failings put the traitor beyond the reach of mercy or compassion which dictated the forms of his punishment. He must always die, but in the later middle ages the horror aroused by his crime was expressed in prolonged and complicated forms of execution (Pollock and Maitland 1968b:500-1):

He should perish in torments to which hell-fire will seem a relief. This is the origin of that 'drawing' which forms the first part of the penalty for high and petty treason. The malefactor was laid on the ground and tied to a horse which dragged him along the rough road to the gibbet. The hurdle that we afterwards hear of may be introduced of mercy; we suspect that originally it fulfilled its object by securing for the hangman a yet living body. In course of time the law was not content with this in the graver cases of high treason. It demanded drawing, hanging, disembowelling, burning, beheading, quartering.

Though even a traitor can die only one death, the political tensions of medieval England made the kings eager to exact more than one penalty - morally if not physically - from those who rebelled against them. The famous rebels of Edward I's reign had, to the minds of Englishmen, merited multiple penalties for their manifold crimes against God and man (Pollock and Maitland 1968b: 501 n. 1):

. . . David of Wales was drawn for treason, hanged for homicide, disembowelled for sacrilege, beheaded and quartered for compassing the king's death. So Wallace

was drawn for treason, hanged for robbery and homicide, disembowelled for sacrilege, beheaded as an outlaw and quartered for divers depredations.

The moral itemisation of the penalty for treason was quite conscious; often, perhaps, politically motivated, as in the judgement passed upon Andrew Harcla, earl of Carlisle, for rebellion against Edward II (Pike 1873: 226):

The award of the Court is, that for your treason you be drawn, and hanged, and beheaded; that your heart, and bowels, and entrails, whence came your traitorous thoughts, be torn out, and burnt to ashes, and that the ashes be scattered to the winds; that your body be cut into four quarters, and that one of them be hanged upon the Tower of Carlisle, another upon the Tower of Newcastle, a third upon the Bridge of York, and the fourth at Shrewsbury; and that your head be set upon London Bridge, for an example to others that they may never presume to be guilty of such treasons as yours against their liege Lord.

There is an obvious intention to humiliate the noble traitor by subjecting him to a prolonged, painful and ignoble death in public, where his demeanour could be judged by lesser men, to spread tangible evidence of his fate through the land as a warning to others, and to underscore the moral basis of his punishment by giving symbolic significance to its various elements. In a later age, at least, this symbolic itemisation was quite conscious, an element in the State's attack on those who sought to subvert it; witness the speech of Sir Edward Coke, as Attorney General, at the Gunpowder Plot trial in 1605 (*Cobbett's State trials* 1809:184):

For first after a traitor hath had his just trial and is convicted and attainted, he shall have his judgment to be drawn to the place of execution from his prison as being not worthy any more to tread upon the face of the earth whereof he was made; also for that he hath been retrograde to nature, therefore is he drawn

backwards at a horse-tail. . . . he must be drawn with his head declining downward, and lying so near the ground as may be, being thought unfit to take benefit of the common air. For which cause also he shall be strangled, being hanged up by the neck between heaven and earth, as deemed unworthy of both or either; . . . Then is he to be cut down alive, and to have his privy parts cut off and burnt before his face as being unworthily begotten, and unfit to leave any generation after him. His bowels and inlay'd parts taken out and burnt, who inwardly had conceived and harboured in his heart such horrible treasons. After, to have his head cut off, which had imagined the mischief. And lastly his body to be quartered, and the quarters set up in some high and eminent place, to the view and detestation of men, and to become a prey for the fowls of the air.

As in the punishment of lesser crimes, the penalties might vary at the whim of monarch or judge, with local usage, or the sex of the victim – women being burnt alive to avoid the indecent exposure of their bodies in public (Bellamy 1973:185–6):

Often the geographical location of the town and the nature of the crime appear to have played a part in determining the way the penalty was inflicted. The customs of Sandwich decreed that all who were condemned for homicide should be buried alive in a place allotted for this purpose at Sandown, called the 'thiefdowns'. At Pevensey any man 'of the franchise' found guilty on a plea of the crown was to be taken to the town bridge at high tide and thrown over into the harbour. At Portsmouth any man who slew another was burned. At Halifax execution of thieves was by means of the original guillotine.

Amongst the alternative punishments for treason was one which seems to have held a particular fascination for the authors of romance – laying alive. Scalping – apparently a Germanic inheritance – is occasionally mentioned in Anglo-Saxon law: the Laws of King Edmund (939–46) prescribe removal of the scalp in the case of slaves who have combined to commit theft; the Laws of Canute (1016–35) include it, amongst

other mutilations, as an alternative to execution in cases of repeated law-breaking:²

... 7 gyl he ðonne gyl mare weorc geweorht hæbbe, ðonne do man ut his eagan 7 ceorfan of his nose 7 earan 7 ða uferan lippan ofþe hine hættian, swyle ðisra swa man wyle, oððe ðonne geræde ða ðe ðarto rædan scealon; swa man sceal steoran 7 eac ðære saule beorgan.

A Latin poem composed in the last years of the tenth century suggests that those so mutilated were cast out to be eaten by the dogs, and the early eleventh-century code known as the Laws of Edward and Guthrum allows them to be assisted if still alive after three days; this alternative to immediate execution was intended to allow an opportunity for repentance, but presumably scalping was usually fatal (Whitelock 1968: 83–92). In post-Conquest law there is a tantalisingly inconclusive reference in the *Leges Henrici Primi*, a compilation made shortly before 1118, embodying elements of Anglo-Saxon tradition.³

Si quis dominum occidat, si capiatur, nullo modo se redimat, set decimatione uel e[ui]scer]atione uel ita postremo scuera gentium animaduersione dampnetur, ut diris tormentorum. . . .

Until the beginning of the present century, scholars read *decimatione uel excoriatione* (“scalping or flaying”), the manuscript variants perhaps reflecting confusion on the part of the compilers and copyists of the *Leges* between the pre- and post-Conquest penalties.⁴ I have not found any mention of flaying in later English legal codes.

It is perhaps not surprising that flaying should figure so slightly in formal legal codes; it was presumably always an exceptional punishment, justified by ancient custom rather than by written law. From what follows it will, however, be apparent

that it made an impression upon the popular imagination out of all proportion to its frequency.⁵ I know of only two recorded cases in English history during the middle ages. In 1176, Prince Henry, having discovered that his vice-chancellor Adam had been writing letters to the king concerning his behaviour, had him tried for treason by the members of his entourage (Stubbs 1867: 122):

... interrogavit eos quid super huiusmodi re esset agendum; et quid faceret de proditore suo, qui cum esset secreti sui conscius, patrem suum in ipsum commovere voluit. Tunc quidam illorum iudicabant illum reum esse mortis; quidam dignum suspendi, quidam vivum excoriari.

Adam escaped the penalty by pleading benefit of clergy. In 1297, after the battle of Stirling Bridge, the dead body of Hugh de Cressingham, Edward I's treasurer and a notorious chief justice in the north, fell into the hands of the Scots (Lumby 1889:382):

Quem excoriantes Scoti diviserunt inter se pellern ipsius per modicas partes, non quidem ad reliquias sed in contumelias, erat enim pulcher et grassus nimis, vocaveruntque eum non thesaurarium sed traiturarium regis.

Neither instance is formally legal, but in both the association of flaying with treason is significant, suggesting that at the end of the thirteenth century it was still acceptable to men's imaginations as a suitable death for traitors.

Evidence of such an association is still more strongly marked in the French tradition. The laws of medieval France, like those of England, embody a mixture of Germanic and Roman elements, the admixture varying between the relatively uniform written codes of the Midi and the numerous local traditional codes of the north. In general, they

distinguish between lese-majesty (including any attack upon the royal person or authority, assault on the king's officers, counterfeiting of his coinage or falsification of the royal seal, etc.) and breach of trust towards a feudal superior (including attempts on the lord's life or the honour of his wife or daughter). But the *coutumiers* are as much concerned with the moral basis of treason as with its technical definition (Salmon 1899:No. 826):

Traisons si est quant l'en ne moustre pas semblant de haine et l'en het mortelement si que, par la haine, l'en tue ou fet tuer, ou bat ou fet battre dusques a aloieure celui qu'il het par traison.

The similarity to the definition given by 'Britton' is striking; the root of treason is in bad faith and breach of friendship.

In France, as in England, specific punishments are rarely prescribed for particular crimes (von Bar 1916:151), but treason is felt to merit the most cruel deaths (Boutillier 1488:f.91v):

Aincores par plus forte rayson pens et dois savoir que, selon la loy, se aucun qui seroit trouvé coupable de tel crime, puis que ce seroit contre le roy ou contre son prince ou son droiturier seigneur, sachés que non pas tant seulement doivent souffrir les faiseurs peine de traytre comme estre tonnelez et esquarterez ou escorchiez et tout le leur perdu et appliqué au seigneur, mais aussi leurs enfans, s'ilz les ont, doivent estre tournez en exil et a desert pour mort convenable. Et la rayson si est que tant horrible et detestable si est le crime de traytre, que de sa nature il infectue la semence du faiseur, et pour ce doit estre destruite la racine, estoc et semence, . . .

The mention here of specific penalties – all extreme and abnormal – is unusual; the heated language and the desire to inflict a moral as well as a physical penalty, pursuing the traitor beyond the grave by eradicating his polluted seed, is not. In France, flaying was evidently not merely a means of inflicting

ing a cruel death on a criminal, but of marking abhorrence of breaches of the fundamental bond of feudal society.

The variety of such breaches and the use of various forms of flaying for their punishment are amply illustrated in French history. In 1314, two brothers, Philippe and Gauthier de Launoy, were found guilty of adultery with two daughters-in-law of the king of France, Philip the Fair. The case made a profound impression on the chroniclers of the age:⁶

. . . apud Pontizaram die Veneris post *Quasimodo* confessi sunt hoc scelus quasi per triennium frequentasse, [idque] pluribus locis et temporibus sacrosanctis; proque tanti perpetracione flagitii ignominiosa mortis genus et poenam luentes, in communi platea Martrei cunctis videntibus vivi excoriati, eisque virilibus una cum genitalibus amputatis, cassisque capitibus ad commune patibulum tracti, cunctisque omnino corio denudatis, per spatulas et brachiorum compagines suspenduntur.

The crime of these *pessimi proditores*, as the chronicles call them, was sexual treason, since the seduction of women of the royal family threatened the legitimacy of the succession. In 1317, Hugues Géraud, bishop of Cahors, was involved in a complicated combination of sacrilege and high treason against his spiritual overlord, the Avignon pope, John XXII, whose life he had attempted by poison and sorcery. Condemned and unfrocked, he was handed over to the secular power (Baluze 1914:185): . . . *per quam postea ipse in parte extitit excoriatus et deinde publice per villam usque ad palliam fuit pertractatus, et demum combustus*. . . In 1366 the chamberlain of Robert, count of Rouci, was partially flayed before execution for having betrayed his lord's castle to an attacking force (Molinier 1883:259):

En icest an fut decapitez, et de une ou de II corroyes de son corps vilz escorchies, à Laon, le chambrellain le conte Robert de Roucy, qui l'an precedant avoit vendu et livré le chastel de Roucy aux Navarrois, et trahy sondit seigneur, comme dit est.

In other instances flaying appears as an act of mob violence rather than a judicial punishment. In 1218, during the course of the Albigensian crusade, Guillaume des Baux, prince of Orange, was seized by the riotous citizens of Avignon, flayed alive and cut into pieces (Luchaire 1912:272; Belperon 1946:342). And in 1418, during the civil conflict between Armagnacs and Burgundians, the Paris mob massacred, amongst other prisoners in the *grand Chastellet*, Count Bernard d'Armagnac, constable of France:⁷ *Et avoit ledit connestable de travers son corps en manière de bende ostée de sa pel environ deux doiz de large par grande desrision*. Both cases suggest that, to the popular imagination, flaying was a fit expression of hatred of and contempt for a noble who might be regarded as traitor to a cause espoused by the mob.

The same popular association of flaying with the punishment of treason coloured some accounts of an incident which belongs equally to French and English history. In 1199, while Richard Coeur-de-lion was besieging the castle of Châlus in the Limousin, in an attempt to extort a discovered treasure from the vavasour, a vassal of his vassal Adémar V, viscount of Limoges, he was wounded by a crossbow bolt fired by a common soldier. Some contemporary chroniclers say that, as the king lay dying, he forgave the soldier his death and awarded him a hundred shillings (Stubbs 1871:83; Stubbs 1879:593); and this is the account generally accepted by modern historians

(Norgate 1887b:382-5; Ramsay 1903:365). Other versions, however, reflect what the contemporary sense of justice thought fitting for one who had killed his overlord, however remote the feudal relationship:⁸ *Sed Marchadeus, rege nesciente, iniecit manus in eum, et tenuit, et, post obitum regis, excoriatum suspendit*. An instance of popular fiction at variance with fact; and the form of the fiction is significant.

Equally, however, there are instances of flaying in both French and English literature where fact appears to have informed fiction. The fate of the de Launoy brothers seems to have inspired one of the warning tales in the compilation which Geoffroy de la Tour-Landry made, about 1371-2, for the moral guidance of his daughters (de Montaiglon 1854:250), from which Caxton later made a popular English version (Offord 1971:166). But in both literatures flaying occurs with greater frequency than the historical records of either country would seem to warrant; and in both there is the same persistent association with various forms of treason. In the English romances, so often based on French originals, flaying alive is the characteristic death inflicted on Christian knights captured by giants, pagans, Saracens – an indication of the inherent barbarity of their traditional foes; paradoxically, it is also the death thought appropriate to giants, pagans, Saracens whenever they fall into the hands of Christian knights – appropriate because they have rebelled against God or know nothing of Him (Herriage 1879:1.1177; Hausknecht 1881:11.1853 and 3077-8; Wheatley 1865-99:268 and 347; Madden 1847:1.6418; Hall 1901:11.1370-1). In both it is the ultimate threat of tyrants and other men of violence: in La3amon's *Brut*, the

emperor Lucius threatens to flay Arthur's soldiers, as vassals of one whom he considers a rebellious vassal (Madden 1847:ll.27, 372-7); in *Guy of Warwick*, the emperor of Germany makes the same threat against the defenders of a city in revolt (Zupitza 1883:ll.2309-14)⁹; the tyrant Astriages flays St Bartholomew for converting many of his people (Weatherly 1936:192), and pilgrims on their way to Jerusalem are martyred by the same method (Furnivall and Locock 1899:ll.378-9)¹⁰. The two literatures illustrate the use of flaying as a punishment for most of the various types of treason: the sexual treason of a knight who seduced the daughter of an emperor (Offord 1971:15); the spiritual treason of Julian the Apostate, flayed after death by order of the Persian king Sapor and his skin nailed to the palace door (Bergen 1918-19:ll.1632-8), and of Caiaphas and those complicit with him in the crucifixion of Christ, flayed alive by order of Vespasian (Kölbing and Day 1931:ll.693-7); the judicial treason of a royal officer in the story of a venal Persian judge whose flayed skin is used to cover the judicial bench on which his son and successor must preside (Furnivall 1897:ll.2675-88); high treason in the punishment suggested by Arthur's court for their fellow-knights who, in Chrétien's *Cligés*, fight for the rebel Angrès, count of Guinesores, against the king who, mercifully, has them dragged at the horse's tail under the walls of Windsor and the eyes of their fellow rebels (Micha 1968:ll.1414-23).

It is the French authors, however, who appear to have made most creative use of flaying as a thematic motif, though its significance has not always been fully appreciated by modern critics. In Chrétien's

Lancelot, those who see the hero riding in the cart ask (Roques 1969:ll.410-13):

A quel martire
Sera cist chevaliers randuz?
Iert il escorchiez, ou panduz,
Noiez, ou ars an feu d'espines?

Such extreme penalties suggest that he must be guilty of some serious crime, and amongst the felonies which, Chrétien implies, merit humiliation in the cart, one manuscript includes treason (Foerster 1899:ll.330-4):

Qui traïson ou muire font,
Et as ceus qui sont champ chëu,
Et as larrons qui ont ëu
Autrui avoir par larrecin
Ou tolu par force an chemin.

The episode of the cart, recognised as a major crux, has been frequently studied and variously interpreted. David Shirt has recently suggested (1973:279-301), in view of Chrétien's demonstrable familiarity with contemporary law – particularly evident in *Lancelot* – that the details given here were meant to have a particular significance for his readers which is lost to us today. Since the cart appears to be both an instrument of punishment in itself – it is *creux* and a ride in it is shameful and degrading – and also a means of conveying convicted criminals to the gallows, Dr Shirt suggests that it is a deliberate – and deliberately ambiguous – combination of two contemporary instruments of justice: the tumbril, which in medieval England was associated with the pillory as a means of publicly humiliating those who had committed minor offences (*causae minores*), and the cart sometimes used to carry to execution those found guilty of capital offences (*causae majores*) amongst which, of course, were the various forms of treason. The dual nature of the cart may,

therefore, be an obliquely ironic reminder that Lancelot, in passionate pursuit of the mission to rescue his lord's wife, was on his way to commit sexual treason (Shirt 1973: 300-1):

By making his hero step on to a vehicle which punishes all types of crime, both great and small, Chrétien can direct our attention to the dubious morality of Lancelot's mission in Gorre and also highlight the paradoxical predicament of Lancelot the feudal vassal and Lancelot the courtly lover.

I would add the suggestion that Chrétien may well have been using the established association of flaying with the punishment of sexual treason as a subtle means of underlining his moral and thematic intention.

The gallows-cart figures in another romance treatment of treason, Jehan Maillart's *Le roman du comte d'Anjou*, in which the countess of Chartres seeks, by counterfeiting letters from her nephew and feudal superior the count of Bourges, to bring about the death of his wife and child. Her victims escape, but the countess is brought to trial in a scene whose legal exactitude perhaps reflects Maillart's experience as a notary and one of the principal officers of the royal chancellery under Philip the Fair. The king grants the count of Bourges the right to judge his aunt in his own seigniorial court where his barons pass sentence on her (Roques 1931: ll.7779-96):

Li un jugent que toute vive
Soit escorchie la chetive
Huy ung membre, l'autre demain,
Tant qu'il n'y ait ne pié ne main
Qu'escorché ne soit et salé;
Et puis le corps soit avalé
En une orde privée obscure:
C'est a luy digne sepulture.
Les autres dient que l'en la larde
De goutes de sain ardent.

Li tiers dient que trop tardant
Va li quens qui ne se delivre:
Pour quoi la lesse il tant vivre?
Face la a ceiaus deiraire
Et tous lez membre du cors traire,
Et pui la lesse au chienz mengier:
Ainsi s'en pourra bien vengier.

By the count's mercy she is eventually burnt alive, being drawn to the place of execution in a cart. That such barbarous punishments, flaying amongst them, could be thought appropriate to a noblewoman in a romance characterised, as Maillart's is, by a high degree of realism, suggests the serious view taken of that form of treason which, by counterfeiting the coin or seal or sign manual of the lord, undermined the economic or legal basis of his authority.

An attack upon the identity of the royal consort and, by implication, the legitimacy of the succession, is involved in the 'False Guinevere' episode of the *Prose Lancelot*, part of the Vulgate Cycle (Sommer 1911: 10-82). Arthur is falsely informed that Guinevere is not his true queen but an imposter substituted for her on the wedding night. Imprisoned and bewitched by the Lady of Carmelide, who claims to be the real queen, he unwisely submits the matter to the judgement of her barons. They decide in her favour and condemn Guinevere to a symbolic penalty (58-9):

Ore escoutés, seignor chevalier de Bretaigne, le jugement qui est fais par le consentement le roy Artu. Que li jugemens aporte que cele qui a esté en sa compaignie encontre Dieu et encontre raison soit dampnee en tel maniere comme vous m'orrés deviser. Que toutes choses que royne porte en sacremens soient en li desfacié: et por ce qu'elle porta la coronne contre raison sera deshonorés li lieus ou elle seoit, si aura de la teste lez cheveus trenchiés a toute la pel, si que il y parra a tous jors mais; et ensemment aura trenchié le quir des mains par defors por ce qu'il appartient a royne que elle soit illuec enointe; et perdra le cuir des

lij. peumes et de sa face pour mieus estre connue. Et avec tout chous'en ira hors du pooir monseigneur le roy Artu sans jamais retenir.

The shorter *Lancelot* version, contained in a number of manuscripts, adds at this point:

Et puis, fait il, si sera traïnee parmi ceste vile, qui est li chief del reiaume, por ce que par murtre et par traison a esté en si grant honor. Et apres not ce, sera arse et la poudre vancee, si que la nouvelle corre par toutes terres de la justice qui faite en sera et que nule jamais ne soit si hardie qui de si grant chose s'entremete.¹¹

The fundamental accusation against the queen, as this addition makes clear, is treason; burning alive and scattering of the ashes were the normal variations of the penalty for treason thought appropriate to women. The partial flaying of scalp and palms is no doubt the author's invention, an extrapolation from the occasional penalty for treason with symbolic overtones relating to the queen's supposed sacrilege in having wrongly received the crown and the sacramental oil at her coronation.¹² Certainly he has been at pains to bring out the moral significance of the episode: the False Guinevere, he tells us, is the illegitimate daughter of King Leodegan, the true queen's father; she has been guilty of a previous attack upon her sister; and she renews her charge of treason on a number of occasions, causing Arthur to upbraid his wife with great cruelty (Sommer 1911:14-15):

Dame levés sus et si vous descoups de ceste coze qui sor vous est mise. Si m'ai Dix, se vous estes tele comme cele demoisele tesmoigne, vous avés bien mors deservie et trop vilainement avés le monde deceu. Car on vous a tenu a la plus vaillant dame del monde et vous seriez la plus desloial et la plus fausse, se vous aviez ce fait.

Lancelot successfully defends the queen's cause in judicial combat – the judgement of

God contradicting that of men – but Arthur continues to give credence to the False Guinevere until, by divine retribution, she is stricken with paralysis and bodily corruption. She confesses her lying accusation, Arthur is re-united with his queen, and the False Guinevere is allowed to die without further punishment. In the shorter version, however, she is condemned to the same penalty to which she had had the queen condemned, in accordance with the contemporary legal principle that the false accuser should suffer the penalty to which he had exposed another.¹³

Though less imaginative than this, at least one Middle English romance, the thirteenth-century *Havelok the Dane*, shows full awareness of the social and legal significance of flaying. The plot contains two parallel instances of treason: that of Earl Godrich who betrays his guardianship of Goldborough, princess of England, by marrying her to a scullion; and that of Earl Godard who gives his ward Havelok, prince of Denmark, to the fisherman Grim to be killed. Grim escapes with the boy to England where he becomes a scullion in the castle of Godrich and is married to Goldborough. The blood royal shows itself in supreme strength and skill; Havelok wins back both kingdoms and brings the traitors to justice. Godrich, perhaps because he had not meditated murder, or because his victim was merely feminine, is simply burnt alive. But Earl Godard, chosen by the king for his position of trust because he (Skeat 1915: N.374-5):

Was þe trewest, as he wende,
Godard, þe kinges oun frende;

repeatedly called *pat Sathanas* and *þe fule*

swike, whose treason is compared with that of Judas (ll.422-5), merits a grimmer fate. In contrast with his own underhand and violent procedures, he is given due process of law; Havelok takes no personal revenge but leaves him to the judgement of his peers (ll.2464-87):

þe king dede Ubbe swiþe calle
 Hise erles, and hise barouns alle,
 Dreng and thein, burgeis and kniht,
 And bad he sholden demen him riht;
 For he kneu þe swike ðam;
 Euerilk del, God was him gram.
 He setten hem dunc bi þe wawe,
 Riche and pouere, heye and lowe,
 Þe olde men, and ek þe grom.
 And made þer þe rihte ðom,
 And sryden unto þe king anon.
 Þat stille sat also þe ston:
 'We deme, þat he be al quic flawen,
 And sifer to þe galwes drawen
 At þis foule mere tayl;
 Þoru his fet a ful strong nayl;
 And þore ben hengeð with two fetres,
 And þare he writen þise let-res:
 "Þis is þe swike þat wende wel
 Þe king haue reft þe lond ilk del,
 And hise sistres with a knif
 Hoþe reft here lif."
 Þis writ shal henge bi him þore;
 Þe ðom is demd, seye we na more.'

The order of the penalties – flaying followed by drawing to the gallows – is as in the cases of the de Launoy brothers and Hugues Géraud; the details – the drawing to be at the tail of an ill-favoured and female beast – have the malicious exactitude of folktale. The execution is observed in the same minute fashion, without horror or pity (ll.2493-2511):

Sket cam a ladde with a knif,
 And bigan riht at þe to
 For to ritte, and for to flo
 So it were grim or gove;¹⁴
 And he bigan þo for to rore,
 Þat men rihte þenþen a mile

Here him rore, þat fule fik,
 Þe ladde ne let no wiht forþi.
 Þey he criede 'merci! merci!
 Þat he ne flow him euerilk del
 With kniue mad of grunden stel.
 Þei garte bringe þe mere sone,
 Skabbed, and ful luele o bone.
 And bunden him riht at hire tayl
 With a rop of an old seyl,
 And drowen him unto þe galwes.
 Nouth bi þe gate, but ouer þe falwes;
 And henge him þore bi þe hals:
 Daþeit hwo recke! he was fals.

'He was fals' – the judgement which justifies the utmost cruelty towards a noble who has behaved like a villein, a vassal who has become a felon.

Despite the vividness of some of these literary references, the flaying of felons can never have been a common occurrence in medieval France or England; otherwise, in that less squeamish age, it would have found more frequent mention in law and chronicle. It was apparently always an exceptional penalty, prescribed by ancient usage rather than written code, and reserved for the punishment of crimes for which society felt a particular abhorrence. But it made an impression on men's minds out of all proportion to its frequency: its very rarity, the detestation felt for the crimes which merited it, the unforgettable spectacle it must have been for anyone who ever saw it carried out, account for the traces it has left in language, folklore and literature. Though folk-memory rather than common experience may have given currency to the French expression *crier comme si l'on vous écorchait*, it must have been rooted in reality. Flayed human skin was used in the past for magical purposes (Simpson 1972:167-9 and 180), and, right up to modern times, as a bizarre memento or talisman (Swanton

1976:23). There are versions of the 'condemned man's riddle' folk-tale which turn upon the flaying of a lover whose skin is used to make the various enigmatic objects concerned in the riddle (Norton 1942:27-57).

Beneath the obvious fascination of flaying may lie other influences whose origins and potency we can only guess at. Primitive forms of execution apparently involved a sacrificial element and the human skin has animistic associations (*Grande Larousse: Ecorchement*):

Comme tout supplice, l'écorchement poursuit primitivement un but magique. . . . Dans plusieurs religions, des victimes ont été rituellement écorchées pour faire servir leurs peaux dans des rites de résurrection.

There no doubt lingered in the minds of laymen something of the element of social vengeance against the deviant which informed early theories of punishment, especially in primitive Germanic law (von Bar 1916:58):

This criminal law, when it assumed the form of vengeance, belonged only to the party injured or to his kinsmen (*sippe*). However, the party injured might be the community at large . . . ; it is only in the latter case . . . that the idea of *public* or State punishment acquires prominence.

But perhaps most potent in imprinting it on the public consciousness was the association of flaying with the worst crimes known to a feudal society, treason in its various political, religious, legal, economic, and sexual forms. Consciousness of the Dark Ages not long past, fear of – and all too frequent experience of – the return of chaos, made medieval Europe fiercely protective of the established order, and ruthless in punishing any attack upon its authority. The common penalty for treason was

horrible enough, but for aggravated cases flaying provided an alternative which would live in men's minds, a warning to others, indicative of society's contempt and hatred for the deviant, symbolic of the pains of hell to come. The association of earthly punishment with divine retribution may account for the suggestion by the compiler of the *Leges Henrici Primi* that the traitor, having been scalped (or flayed) (Downer 1972: 233):

. . . while enduring the dreadful agonies of his tortures and the miseries of his vile manner of death he may appear to have yielded up his wretched life before in fact he has won an end to his sufferings, and so that he may declare, if it were possible, that he had found more mercy in hell than had been shown to him on earth.

It may also explain a strange occurrence in 1295 when Thomas Turbeville, knight, condemned for treason, was accompanied on his last journey by tormentors dressed like devils (Luard 1859:306).

Such was the interdependence of medieval society that the extreme penalty was thought as appropriate to those who attacked an immediate feudal superior as to those who acted against the monarch, the fountain-head of secular authority; to those who undermined the source of spiritual authority by denying or betraying Christ (like Caiaphas, Judas, Julian the Apostate) or assaulting His earthly legate (as Hughes Géraud did in his poison plot against the Avignon pope); to those who (like de Rouci's chamberlain) threatened the security of the state by treachery in war; or undermined the ruler's legal authority by falsifying his seal or writ (like the countess of Chartres); or the legitimacy of the succession by seducing women of the ruling

family (as did the de Launoy brothers). Even where legal authority for such a penalty was lacking, popular opinion seems to have approved it in circumstances of civil riot for the punishment of those who (like Guillaume des Baux and Bernard d'Aimagnac) were judged to have betrayed a cause or wrongly opposed it.

These are all characteristic felonies, breaches of the feudal bond; breaches sufficiently serious to merit flaying alive were likely to be committed by men of some standing in feudal society. For a criminal noble the least degrading death was by beheading. Hanging, drawing, and quartering were, by comparison, shameful penalties, especially if preceded by the customary dragging across the ploughed fields or through the filth of the city streets upon a hide or hurdle. But even then a nobleman might hope to die with some stoicism if strangulation produced insensibility before evisceration commenced. And tradition surrounded public execution with a ritualistic ceremonial, designed to impress onlookers with the power and authority of the State, in which the victim might play his part with some dignity. In a late but characteristic example of the ritualisation of punishment for offences against the royal security or dignity, an act of Henry VIII prescribing loss of the right hand for murder or bloodshed within the king's court, each stage of the ceremonial mutilation was under the supervision of some royal officer – chamberlain, butler, cook – technically qualified by his domestic duty (Pike 1876:83). Flaying, however, no matter how ritualised, could never be anything but a horrifying spectacle; a slow and hideous torture under which no nobleman could maintain his

sang froid, but must die inch by inch, shrieking in agony, amidst the contempt and derision of ordinary men whom contemporary social theory had taught to regard him as belonging, physically and morally, to a superior order of beings.

Such an end, however rare, could not fail to have significance for writers of romance, concerned as they were to reflect and interpret chivalric values. Repeated presentation of chivalric idealism involved, as a foil, varied examples of unchivalric behaviour, and the more heightened the one the more extreme the manifestations of the other were required to be. The importance of law in feudal society, the extent of legal knowledge among aristocratic laymen, the recognition of treason as the characteristic felony, and the traditional association of flaying with aggravated forms of treason, might well give that particular penalty a certain symbolic value; the unspeakable punishment for the worst of crimes. The rarity of its actual infliction need not have detracted from its meaning, so long as past instances lingered in folk-memory; in striving to present contemporary codes through the medium of traditional stories set in an indeterminate past, historical accuracy was of less importance than symbolic potency. Though the instances, legal, historical, and literary, assembled here are no doubt far from complete, they are, I think, sufficient to establish that flaying alive had such value for French and English romance writers of the middle ages. Much of its potency may well have lain in its ability to evoke, in a single shocking image, the primitive significance of treason for an age of waning feudalism, an age when (Bloch 1977:4) "literature was the

stage upon which a class in transition struggled – against deep-seated historical interests – toward a new definition of itself.”¹⁵

Notes

The following abbreviations have been used in the paper and in these notes:

Cl MA Classiques français du moyen âge
EETS Early English Text Society, Original Series
EETS ES Early English Text Society, Extra Series
MED Middle English Dictionary, ed. H. Kurath,
 S. M. Kuhn, J. Reidy. Ann Arbor,
 Michigan, 1952–

¹ Friendship implied a somewhat more formal relationship at this period, involving a degree of obligation on both sides. Professor Dominica Legge has pointed out to me a number of examples of this quasi-legal sense in her *Anglo-Norman letters and petitions*, including: . . . et jeo persueray envers lui ove tout mon pouair, et ove toute l'amistee que jeo purray avoir (Legge 1941:384). Middle English usage reflects a similar degree of formality in some of the relationships implied: MED *friend* n., 1(a) “a friend, a comrade, an intimate; often, one who supports the same cause (or fights on the same side) as oneself, a comrade in arms, an ally, a confederate; (b) one who befriends a person or an institution, a benefactor, a patron.” Compare, in the Authorised Version: . . . “but the Jews cried out, saying, If thou let this man go, thou art not Caesar’s friend” (John 19:12).

² Robertson 1925:190; see also 14. On the Germanic origins of scalping, see Lear 1965:159–61, and Hoyoux 1948:479–508.

³ Downer 1972:232. He follows Liebermann 1898: 1.591 in suggesting, as a variant for *decomatione*, *decoriatione* (Liebermann: *Schindung*).

⁴ Pollock and Maitland 1968b:500 n. 5 comment on this passage of the *Leges*: “The *comatio et excoriatio* is the German *Strafe zu Haut und Haar*.” In confirmation they refer to Brunner 1892:605–6.

⁵ Many instances, from the persistent belief that the skins of flayed Danes were nailed to church doors in Anglo-Saxon England to the actual flaying of a Leicestershire peasant lad by a lynch-mob about 1700, have been gathered together by Swanton 1976.

⁶ *Recueil des historiens* 20:609–10. For other chronicle accounts of the incident see *Recueil des historiens* 20:691, 21:658, and Buchon 1827:228.

⁷ Douët-d’Arcq 1862:271. English chroniclers knew of and were shocked by the event, witness Galbraith 1937:119.

⁸ Stubbs 1871:84. According to another account (Luard 1865:71), the soldier was sent by Mercadier, Richard’s lieutenant, to his sister Jeanne, the ex-queen of Sicily, who had him tortured to death.

⁹ Interestingly, the Caius MS. provides a variant – *quykke drawe* – to the threat to flay in the Auchinlech MS.

¹⁰ For further examples see also Smithers 1952: II.1731–3; Foerster 1890:II.4842–50; and Hucher 1878:628.

¹¹ BN MS. fr. 768, f. 182d. I am indebted to Dr Elspeth Kennedy for this quotation from her forthcoming edition of the *Prose Lancelot*. See also Sommer 1911:386.

¹² The above-mentioned case of Hugues Géraud may provide a historical parallel. Some commentators have seen symbolic significance in his partial flaying (*Histoire littéraire* 1915:410): . . . on l’écorcha *in aliqua parte sui corporis*, ce qui veut dire peut-être qu’on lui râcla les doigts et l. tête, parties de son corps qui avaient jadis été consacrées par l’huile sainte.

¹³ BN MS. fr. 768, f. 176b–c; Sommer 1911:4.389–90. On the punishment of false accusers in law, see von Bar 1916:163, and in romance, Riedel 1938:90–2.

¹⁴ If the proposed emendation of *grim* to *goune* (Skeat 1915:118) is accepted, allowing *gore* to be read as “robe”, the image of the body stripped of its skin as of a garment becomes even more striking.

¹⁵ I have demonstrated elsewhere (Barren 1980) what complex and sophisticated use a romance author could make of treason, the legal processes and punishments (including flaying) invoked against it in analysing the values of chivalric society.

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